

**42 IAC 1-5-5 Conflict of interest; advisory opinion by commission (IC 4-2-6-5.5)**

**42 IAC 1-5-6 Conflict of economic interests; decisions and voting (IC 4-2-6-9)**

**42 IAC 1-5-7 Prohibition against financial interest in contract (IC 4-2-6-10.5)**

**IC 4-2-6-17 Use of state property**

**42 IAC 1-5-13 Ghost employment**

An FSSA employee sought advice regarding whether working as an unpaid reserve police officer for a city would create any conflicts of interests with his state position as Assistant Director of Nursing at Madison State Hospital. SEC determined that the employee's simultaneous employment with the city and FSSA would not violate any ethics rules as long as the employee did not benefit from or divulge confidential information; the employee did not participate in any decisions or votes that he or the city would have a financial interest in; and the employee did not use state property or state time for non-state business.

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2018-FAO-003

The Indiana State Ethics Commission (Commission) issues the following advisory opinion concerning the State Code of Ethics (Code) pursuant to IC 4-2-6-4(b)(1). The following opinion is based exclusively on sworn testimony and documents presented by the requestor.

### **BACKGROUND**

The employee is a registered nurse and is employed by the Family and Social Services Administration (FSSA) as the Assistant Director of Nursing at Madison State Hospital. The employee is interested in applying for the position of a reserve police officer with the city of Hanover. He plans to continue working full-time for FSSA/Madison State Hospital while training and working as a reserve officer. He provides that he would not train or serve as a reserve officer while on state time. He further provides that he would not seek any political gain and he would not receive any compensation for performing his duties as a reserve officer for the city of Hanover.

The employee advises that there are times when he is serving as a reserve officer that he may be asked to provide back up to county or state police within the Clifty Falls State Park.

The employee is seeking a Formal Advisory Opinion from the Commission to determine whether, under the Code, it would be acceptable for him to (1) obtain employment as a reserve police officer for the Hanover Police Department while also employed at FSSA, and (2) enter a state park with a firearm while carrying out his duties as a reserve police officer.

### **ISSUE**

- 1) What ethics issues, if any, arise for the employee given his position as a state employee and his prospective, simultaneous service as a reserve police officer for the city of Hanover?

## RELEVANT LAW

### **IC 4-2-6-5.5 (42 IAC 1-5-5)**

#### **Conflict of interest; advisory opinion by commission**

Sec. 5.5. (a) A current state officer, employee, or special state appointee may not knowingly do any of the following:

(1) Accept other employment involving compensation of substantial value if the responsibilities of that employment are inherently incompatible with the responsibilities of public office or require the individual's recusal from matters so central or critical to the performance of the individual's official duties that the individual's ability to perform those duties would be materially impaired.

(2) Accept employment or engage in business or professional activity that would require the individual to disclose confidential information that was gained in the course of state employment.

(3) Use or attempt to use the individual's official position to secure unwarranted privileges or exemptions that are:

(A) of substantial value; and

(B) not properly available to similarly situated individuals outside state government.

(b) A written advisory opinion issued by the commission stating that an individual's outside employment does not violate subsection (a)(1) or (a)(2) is conclusive proof that the individual's outside employment does not violate subsection (a)(1) or (a)(2).

### **IC 4-2-6-9 (42 IAC 1-5-6)**

#### **Conflict of economic interests; commission advisory opinions; disclosure statement; written determinations**

Sec. 9. (a) A state officer, an employee, or a special state appointee may not participate in any decision or vote, or matter relating to that decision or vote, if the state officer, employee, or special state appointee has knowledge that any of the following has a financial interest in the outcome of the matter:

(1) The state officer, employee, or special state appointee.

(2) A member of the immediate family of the state officer, employee, or special state appointee.

(3) A business organization in which the state officer, employee, or special state appointee is serving as an officer, a director, a member, a trustee, a partner, or an employee.

(4) Any person or organization with whom the state officer, employee, or special state appointee is negotiating or has an arrangement concerning prospective employment.

(b) A state officer, an employee, or a special state appointee who identifies a potential conflict of interest shall notify the person's appointing authority and ethics officer in writing and do either of the following:

(1) Seek an advisory opinion from the commission by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter. The commission shall:

(A) with the approval of the appointing authority, assign the particular matter to another person and implement all necessary procedures to screen the state

officer, employee, or special state appointee seeking an advisory opinion from involvement in the matter; or

(B) make a written determination that the interest is not so substantial that the commission considers it likely to affect the integrity of the services that the state expects from the state officer, employee, or special state appointee.

(2) File a written disclosure statement with the commission that:

(A) details the conflict of interest;

(B) describes and affirms the implementation of a screen established by the ethics officer;

(C) is signed by both:

(i) the state officer, employee, or special state appointee who identifies the potential conflict of interest; and

(ii) the agency ethics officer;

(D) includes a copy of the disclosure provided to the appointing authority; and

(E) is filed not later than seven (7) days after the conduct that gives rise to the conflict.

A written disclosure filed under this subdivision shall be posted on the inspector general's Internet web site.

(c) A written determination under subsection (b)(1)(B) constitutes conclusive proof that it is not a violation for the state officer, employee, or special state appointee who sought an advisory opinion under this section to participate in the particular matter. A written determination under subsection (b)(1)(B) shall be filed with the appointing authority.

#### **42 IAC 1-5-10**

##### **Benefiting from confidential information**

Sec. 10. A state officer, employee, or special state appointee shall not benefit from, or permit any other person to benefit from, information of a confidential nature except as permitted or required by law.

#### **42 IAC 1-5-11**

##### **Divulging confidential information**

Sec. 11. A state officer, employee, or special state appointee shall not divulge information of a confidential nature except as permitted by law.

#### **IC 4-2-6-6**

##### **Present or former state officers, employees, and special state appointees; compensation resulting from confidential information**

Sec. 6. No state officer or employee, former state officer or employee, special state appointee, or former special state appointee shall accept any compensation from any employment, transaction, or investment which was entered into or made as a result of material information of a confidential nature.

#### **IC 4-2-6-17**

##### **Use of state property for other than official business; exceptions; Violations**

Sec. 17. (a) Subject to IC 4-2-7-5, a state officer, an employee, or a special state appointee may not use state materials, funds, property, personnel, facilities, or equipment for purposes other than

official state business unless the use is expressly permitted by a general written agency, departmental, or institutional policy or regulation that has been approved by the commission. The commission may withhold approval of a policy or rule that violates the intent of Indiana law or the code of ethics, even if Indiana law or the code of ethics does not explicitly prohibit that policy or rule.

(b) An individual who violates this section is subject to action under section 12 of this chapter.

## **42 IAC 1-5-13**

### **Ghost employment**

Sec. 13. A state officer, employee, or special state appointee shall not engage in, or direct others to engage in, work other than the performance of official duties during working hours, except as permitted by general written agency, departmental, or institutional policy or regulation.

### **ANALYSIS**

The Commission can only interpret the rules in the Code of Ethics. The employee's question about his ability to carry a firearm onto state property, such as the Clifty Falls State Park, falls outside of the Code of Ethics and should be addressed by the State Personnel Department and the agencies who oversee that property.

#### *A. Outside employment*

An outside employment or professional activity opportunity creates a conflict of interests under IC 4-2-6-5.5(a) if it results in the employee: 1) receiving compensation of substantial value when the responsibilities of the employment are inherently incompatible with the responsibilities of public office or require the employee's recusal from matters so central or critical to the performance of his official duties that his ability to perform them would be materially impaired; 2) disclosing confidential information that was gained in the course of state employment; or 3) using or attempting to use his or her official position to secure unwarranted privileges or exemptions of substantial value that are not properly available to similarly situated individuals outside state government.

The employee would not be compensated by the city of Hanover for serving as a reserve police officer so the Commission does not need to make a determination on subsection (1) of this rule. In addition, the employee's service as a reserve police officer would not require him to disclose confidential information he gained through his state employment. The employee must ensure that he does not use his official position to secure unwarranted privileges.

General Counsel for FSSA attended the meeting on behalf of FSSA's Ethics Officer and advised the Commission that FSSA did not have any concerns about the employee's outside professional activity as a reserve officer.

Accordingly, the Commission finds that the employee's outside professional activity as a reserve police officer would not create a conflict of interests for him under this rule.

*B. Conflict of interests-decisions and votes*

IC 4-2-6-9 (a)(1) prohibits the employee from participating in any decision or vote, or matter relating to that decision or vote, if he has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(3) prohibits the employee from participating in any decision or vote, or matter relating to such a decision or vote, if he has knowledge that a business organization with whom he is negotiating employment with or serving as an officer, director, trustee, partner, member, or employee has a financial interest in the matter.

The employee will not be a paid employee of the Hanover Police Department, but he will be serving as a member of the Hanover Police Department. Accordingly, this rule would be triggered if the employee participates in any matter related to a decision or vote that could financially impact the Hanover Police Department. Specifically, if the Department is considered a business organization with which he is serving as a member and it has a financial interest in any decisions or votes the employee would make or participate in as the Assistant Director of Nursing, he could have a potential conflict of interests under this rule.

The Commission finds that the employee's current responsibilities as the Assistant Director of Nursing would not require him to participate in decisions or votes, or matters relating to such decisions or votes, in which the Hanover Police Department would have a financial interest. In the event he would otherwise participate in any such matters during the course of his state employment, he should follow the procedure set forth in IC 4-2-6-9(b) to disclose the conflict.

*C. Confidential information*

The employee is prohibited under 42 IAC 1-5-10 and 42 IAC 1-5-11 from benefitting from, permitting any other person to benefit from, or divulging information of a confidential nature except as permitted or required by law. Similarly, IC 4-2-6-6 prohibits the employee from accepting any compensation from any employment, transaction, or investment which is entered into or made as a result of material information of a confidential nature. The term "person" is defined in IC 4-2-6-1(a)(13) to encompass both an individual and a corporation. In addition, the definition of "information of a confidential nature" is set forth in IC 4-2-6-1(a)(12).

To the extent the employee is exposed to or has access to such confidential information in his position with FSSA, he would be prohibited not only from divulging that information but from ever using it to benefit any person, including the Hanover Police Department, in any manner.

*D. Use of state property and Ghost employment*

IC 4-2-6-17 prohibits the employee from using state property for any purpose other than for official state business unless the use is expressly permitted by a general written agency, departmental, or institutional policy or regulation. Likewise, 42 IAC 1-5-13 prohibits the employee from engaging in, or directing others to engage in, work other than the performance of official duties during working hours, except as permitted by general written agency, departmental, or institutional policy or regulation.

To the extent that the employee observes these provisions while serving as a reserve police officer, such outside professional activity would not violate these ethics laws.

### **CONCLUSION**

Subject to the foregoing analysis, the Commission finds that the employee's intended outside professional activity/service as a volunteer reserve police officer for the city of Hanover would not be contrary to the Code of Ethics.

Respectfully Submitted,

Jennifer Cooper  
Ethics Director